

ST 95-28

Tax Type: SALES TAX

Issue: Stamped Cigarettes Returned to Manufacturer at 1993 Rate of Tax

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

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XXXXX,                                )      CLAIM FOR CREDIT  
      Taxpayer                        )      Case No.  
      v.                             )  
THE DEPARTMENT OF REVENUE             )      John E. White,  
OF THE STATE OF ILLINOIS             )      Administrative Law Judge  
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RECOMMENDED DECISION

APPEARANCES: XXXXX, appeared on Taxpayer's behalf.

SYNOPSIS: XXXXX ("taxpayer") is a distributor of cigarettes. At issue in this matter are three separate claims for credit taxpayer filed with the Illinois Department of Revenue ("Department"). Specifically, the issue involves whether taxpayer is entitled to a credit for stamped cigarettes it returned to manufacturers at the rate of tax in effect after July 14, 1993. The Department issued credit memos to taxpayer, based on the claims at issue, in an amount equal to the tax rate in effect prior to July 14, 1993.

A hearing on this issue was held at the Department's office in Chicago. Taxpayer was represented by its President, XXXXX. Taxpayer introduced at hearing documentary evidence consisting of, inter alia, taxpayer's books and records, and the testimony of its President. After considering the evidence adduced at that hearing, I am including in this recommendation specific findings of fact and conclusions of law. I recommend that the matter be decided in favor of the Department.

FINDINGS OF FACT:

1. Taxpayer is a distributor of cigarettes as that term is defined in the Cigarette Tax Act, 35 ILCS 130/1 et seq. (1993) ("CTA"), and the Cigarette Use Tax Act, 35 ILCS 135/1 et seq. (1993) ("CUTA") 35 ILCS 130/1.

2. Effective July 14, 1993, the Illinois legislature amended section 2 of the CTA, and increased the total cigarette tax to 22 mills per cigarette sold, i.e., 44 cents per pack of twenty cigarettes. 35 ILCS 135/2(a) (amended by P.A. 88-88, effective July 14, 1993).

3. As amended, section 2 of the CTA also included the following language:

. . . Any distributor having cigarettes to which stamps have been affixed in his or her possession for sale at 12:01 a.m. on the effective date of this amendatory Act of 1993, is required to pay the additional tax imposed by this amendatory Act of 1993 on such stamped cigarettes.

35 ILCS 135/2(a) (amended by P.A. 88-88, effective July 14, 1993).

4. Pursuant to P.A. 88-88, the Department informed distributors that stamped cigarettes in their possession for sale, i.e., in their inventory, at 12:01 a.m. on July 14, 1993 would be subjected to a "floor stock tax" (see Informational Bulletin FY 94-1 ("FY 94-1")).¹

5. Also pursuant to P.A. 88-88, the Department made available forms, titled "Cigarette Floor Stock Tax Returns" (Form "RC-50"), on which a distributor would report to the Department the amount of floor stock tax it owed. See Taxpayer Ex. No. 11.

6. On or about July 15, 1993, taxpayer filed a Form RC-50. Taxpayer Ex. No. 11.

7. Taxpayer's President, XXXXX, signed the RC-50. Id.

8. XXXXX's testimony that the cigarettes identified in taxpayer's claims, i.e., 12,260 packs of cigarettes (300, 5060 and 6900 packs, respectively) were in taxpayer's inventory on July 14, 1993, see Tr. p. 13, is contradicted by the RC-50, on which taxpayer stated that it had 900 packs of cigarettes in its inventory to be returned to manufacturers. Taxpayer Ex. No. 11.

9. Taxpayer possessed unaffixed tax stamps on July 14, 1993, for which it did not pay a floor stock tax on that date. Taxpayer Ex. No. 11.

10. Distributors, such as taxpayer, may purchase stamped cigarettes from other distributors, and regularly purchase unstamped cigarettes from manufacturers. See e.g., Department Form RC-9, and the instructions therefor.

11. The Department granted taxpayer credit on taxpayer's claims at the rate of 15 mills per cigarette, i.e., at the rate of 30 cents per pack of twenty. Taxpayer Ex. Nos. 4-6.

CONCLUSIONS OF LAW: Claims for credit under the CTA are covered by section 9d of that Act, which also incorporates by reference sections 6a, 6b and 6c of the Retailers' Occupation Tax Act ("ROTA"), 35 ILCS 120/6a-6c. Pursuant to section 6b of the ROTA, the Department's Notice of Tentative Determination of a taxpayer's claim is prima facie proof of the correctness of the Department's determination. A taxpayer challenging the Department's Tentative Determination has the burden of rebutting, with documentary evidence closely associated with its books and records, the prima facie correctness of the Department's determination of the claim.

In this matter, taxpayer acknowledges that it received a credit for the stamped cigarettes it returned to the manufacturer. Taxpayer Ex. Nos. 4-6. The issue to be determined here, therefore, is whether taxpayer has shown, through documentary evidence closely associated with its books and records, that the cigarettes identified in its three claims were part of taxpayer's inventory when it paid the floor stock tax, and were, additionally, actually subjected to the floor stock tax.

Taxpayer's President's testimony at hearing was generally in the form of conclusions and argument, the crux of which is contained on page 10 of the hearing transcript.

. . . from these exhibits we know that the cigarettes returned to the manufacturers were taken from the inventory of the claimant. We also know that the shelf life of cigarettes is six to nine months. And we know that the claimant had 63,210 stamped packs of cigarettes in its inventory on July 14th, 1993. And we know that the claimant paid the floor tax on these cigarettes.

Consequently, any dry cigarettes that were returned to manufactures prior to January 14, 1994, which is six months after the date of the tax increase, must have been in inventory on July 14, 1993.

Tr. p. 10.

Taxpayer's President testified specifically, when asked specifically, that the cigarettes identified in its claims were in its inventory on 7/14/93. Tr. p. 13. That specific testimony, however, is contradicted by taxpayer's RC-50, which XXXXX personally signed on taxpayer's behalf. On that return, taxpayer stated that it had 900 packs in inventory to be returned to the manufacturer. Taxpayer Ex. No. 11. It is reasonable to infer, however, that if taxpayer had, on 7/14/93, 12,260 packs of cigarettes scheduled to be returned to manufacturers, it would have included that number on the RC-50 it filed because cigarettes to be returned to the manufacturer were not subjected to the floor tax. See Taxpayer Ex. No. 11.

Additionally, XXXXX's conclusion, that the cigarettes in question must have been in claimant's inventory on July 14, 1993, has as an unstated but necessary premise that the only cigarettes available for it to return to manufacturers were those in its inventory on 7/14/93. That premise, however, is not necessarily true. Distributors may, for example, purchase stamped cigarettes from other distributors. See Dept. Form RC-9, and the instructions thereto. Distributors also regularly purchase cigarettes from manufacturers. The hearing record, however, does not contain a full description of taxpayer's transactions involving cigarettes and tax stamps for the claim period, which transactions ordinarily would be reported on taxpayer's monthly reports to the Department.

Based on the documentary evidence which was introduced at hearing, I cannot conclude that taxpayer has clearly shown that the cigarettes identified in the claims were in its inventory on 7/14/93, and were

subjected to the floor stock tax. Taxpayer has not rebutted the prima facie correctness of the Department's partial denial of its claims. I recommend, therefore, that the Director finalize the Notices of Tentative Determination of Claim.

Administrative Law Judge

Date Entered

1. I take official notice of the contents of this document.